

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re:

SYBIL JONES

Debtors.

) *Chapter 13 Case No. 09-51550*

)

) **JUDGE KOSCHIK**

)

)

)

SYBIL JONES

1294 Dover Avenue

Akron, OH 44320

Plaintiff

) **ADVERSARY CASE NO.**

vs.

CITY OF AKRON

c/o Patricia Ambrose Rubright, Law Director

City of Akron Law Department

161 South High Street, Suite 202

Akron OH 44308-1655

Defendant

) **COMPLAINT TO DETERMINE SECURED**
) **VALUE AND AVOID SECOND**
) **UNSECURED MORTGAGE LIENS OF**
) **CITY OF AKRON**

)

)

Now comes Plaintiff-debtor, Sybil Jones, by counsel and for her Complaint against
Defendant City of Akron states and avers as follows:

1. Plaintiff is an adult individual residing in Akron, Ohio.
2. Plaintiff filed a Bankruptcy proceeding under Chapter 13 of Title 11 of the United States Code (hereafter "Bankruptcy Code") on or about April 16, 2009.
3. Defendant City of Akron is a municipality within the State of Ohio.
4. This action is properly commenced as an adversary proceeding pursuant to Fed. R. Bankr. Proc. 7001.

5. This adversary proceeding relates to and arises in the Chapter 13 case of the Plaintiffs bearing case number **09-51550**, which is currently pending in the United States Bankruptcy Court for the Northern District of Ohio, Eastern Division.

6. This Court has subject matter jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 1334 and 157 and the General Order No. 84 entered in this District on July 16, 1984 and the claims set forth herein are core proceedings within the meaning of the United States Bankruptcy Code.

7. This Court has personal jurisdiction over the Defendants pursuant to Fed. R. Bankr. 7004(f).

8. This District is the proper venue for this adversary proceeding pursuant to 28 U.S.C. § 1409(a).

**COUNT I: AVOID THIRD MORTGAGE LIEN OF
THE CITY OF AKRON**

9. The Debtor owns a fee simple interest in real estate located 1294 Dover Avenue, Akron, OH 44320 and known as parcel numbers 6732077 and more fully described on the Legal Description attached as Exhibit A .

10. This Property, which serves as the Debtor's principal residence, has a probable fair market value of \$55,350.00 pursuant to the valuations of the Summit County Auditor attached hereto as Exhibit B.

11. At the time the bankruptcy was filed, the property is encumbered by a first mortgage to CitiMortgage, Inc. in the approximate amount of \$87,156.83 pursuant to its proof of claim filed in the Debtor's bankruptcy case. *See Claim No. 16-1.*¹

¹ CitiMortgage, Inc. has since transferred its claim and it is now held by Christina Trust c/o Selene Finance LP. *See Docket at #73 & 79.*

12. The residence is further encumbered by second mortgage to First Merit Bank in the estimated amount of \$1,829.07 pursuant to a proof of claim filed in Debtors' bankruptcy case. *See Claim No. 11-1.*

13. Based on the provisions of 11 U.S.C. § 506(a) and the decision rendered by the Sixth Circuit Court of Appeals in In re Lane, 280 F.3d 663 (6th Cir. 2002), because the fair market value of the residence (\$55,350.00) is less than the balance owed on the first mortgage (\$87,156.83), the third mortgage lien of the City of Akron and its successors and/or other assignees, agents, transferors, successors, or servicing companies is a wholly unsecured claim.

14. Pursuant to the provisions of 11 U.S.C. §§ 506(a) and 522(f) of the Bankruptcy Code, the third mortgage lien of the City of Akron and its successors and/or other assignees, agents, transferors, successors, or servicing companies has no secured value in the property located at 1294 Dover Avenue, Akron, OH 44320.

WHEREFORE, Plaintiff prays that this Court enter its Order declaring and determining the third mortgage lien held by The City of Akron and its successors and/or other assignees, agents, transferors, successors, or servicing companies encumbering the Debtor's principal residence to be an unsecured claim and cancelled of record upon successful completion of the plan pursuant to 11 U.S.C. § 506.

Respectfully submitted,

THOMAS, TRATTNER & MALONE, LLC

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